

REMARKS

In the Office Action mailed on March 19, 2004, claims 1, 2, 6 and 8 were rejected under 35 U.S.C. 102(e) as being anticipated by Takagi et al. (U.S. Patent No. 6,504,919). This rejection is respectively traversed.

In accordance with the foregoing, claims 1, 2, 6 and 8 are amended and claims 3-5, 7 and 9-11 are cancelled without prejudice or disclaimer.

Claims 1, 2, 6 and 8 are pending in the subject application, of which claims 1, 2 and 6 are independent.

Takagi et al. discloses a data transmission apparatus and data reception apparatus. Specifically, FIG. 9 of Takagi et al. discloses performing a communication by determining whether to select a G3 short communication procedure or a V.34 communication procedure based upon whether the data amount exceeds a predetermined level (see column 10, lines 46-67).

Unlike the apparatus disclosed in Takagi et al., in the present invention, performing communications by switching over a plurality of communications modes includes "measuring a communication performance based on each of the communication modes under a plurality of communication conditions...obtaining a condition-based optimum communication mode in which the communication performance in one of the communication modes exceeds a communication performance in other communication mode per communication condition...[and] selecting the condition-based optimum communication mode in accordance with the communication condition when in communications..." as recited in claim 1.

However, Takagi et al. discloses determining a data amount of the transmission original, and selecting a communication procedure based on whether the data amount exceeds a predetermined level.

Takaga et al. also fails to discuss those limitations recited in claims 2 and 6 which are similar to the limitations as recited in claim 1.

In addition, claim 8 includes patentably distinguishable features of its own. For example, claim 8 recites "said performance measuring module measures the communication performance...with other communications device if not stored with the condition-based optimum communication mode in communications with said other communications device..."

Withdrawal of the foregoing rejections is respectfully requested.

If there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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